57th

MONTANA LEGISLATIVE HISTORY

Chapter 408 1995

Bill H 232 S _____ Original bill & history ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 1/26	✓C	Hearing Date(s) 3/3	✓C
1/31	✓C	3/8	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report _____

Chapter Page

MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION. 1475

407 *(House Bill No. 214; Kottel)* AN ACT GENERALLY REVISING THE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE PUBLIC OF REGISTRATION INFORMATION NECESSARY FOR PUBLIC PROTECTION; AND AMENDING SECTIONS 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND 46-23-507, MCA. 1478

408 *(House Bill No. 232; Jore)* AN ACT REQUIRING THAT A WRITTEN STATEMENT OF A SHERIFF'S CAUSE FOR DENIAL OF A CONCEALED WEAPON PERMIT BE GIVEN TO THE APPLICANT; CLARIFYING THE APPEAL OF THE DENIAL OF A PERMIT; ALLOWING THE FAMILIARITY WITH FIREARMS PREREQUISITE TO A PERMIT TO BE SATISFIED BY THE APPLICANT PHYSICALLY SHOWING THE SHERIFF OR THE SHERIFF'S DESIGNEE THAT THE APPLICANT KNOWS HOW TO HANDLE FIREARMS; ALLOWING THE GOVERNOR TO NEGOTIATE CONCEALED WEAPON PERMIT RECIPROCITY AGREEMENTS WITH OTHER STATES AND REQUIRING THE GOVERNOR TO ESTABLISH AN ADVISORY COUNCIL; ADDRESSING THE FEDERAL BACKGROUND CHECK AND 5-DAY WAITING PERIOD REQUIREMENTS FOR A HANDGUN PURCHASE; AMENDING SECTIONS 45-8-321 AND 45-8-324, MCA; AND PROVIDING CONTINGENT TERMINATION DATES. 1484

409 *(House Bill No. 286; Pavlovich)* AN ACT CLARIFYING THAT IT IS AN UNLAWFUL ACT FOR ANY BREWER OR BEER IMPORTER TO COERCE, ATTEMPT TO COERCE, OR PERSUADE A BEER WHOLESALER TO SET A PRICE FOR ANY PRODUCT; AND AMENDING SECTION 16-3-221, MCA. 1486

410 *(House Bill No. 295; Holland)* AN ACT REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO ISSUE ORDERS OF NONCOMPLIANCE FOR FAILURE TO MEET CAMPAIGN FINANCE REPORTING REQUIREMENTS; AND AMENDING SECTION 13-37-121, MCA. 1488

411 *(House Bill No. 305; Kadas)* AN ACT AUTHORIZING THE ISSUANCE OF A LOAN TO THE DEPARTMENT OF JUSTICE TO BE APPROPRIATED FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN; EXTENDING REPAYMENT AND PROVIDING FOR INTEREST ON PREVIOUS LOANS; AND PROVIDING AN EFFECTIVE DATE. 1489

412 *(House Bill No. 325; Simpkins)* AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS SURVIVORSHIP BENEFIT;

	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	43	0
3/11	3RD READING CONCURRED	35	4
	RETURNED TO HOUSE		
3/13	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/14	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 153		
	EFFECTIVE DATE: 10/01/95		

HB 232 INTRODUCED BY JORE, ET AL.

REQUIRE THAT A WRITTEN STATEMENT OF A SHERIFF'S CAUSE FOR DENIAL OF A CONCEALED WEAPON PERMIT BE GIVEN TO THE APPLICANT

1/16	INTRODUCED		
1/16	FIRST READING		
1/16	REFERRED TO JUDICIARY		
1/26	HEARING		
2/01	COMMITTEE REPORT—BILL PASSED		
2/03	2ND READING PASSED	82	16
2/04	3RD READING PASSED	81	17
	TRANSMITTED TO SENATE		
2/06	FIRST READING		
2/06	REFERRED TO JUDICIARY		
3/03	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	36	14
3/15	3RD READING CONCURRED	37	12
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	94	5
4/04	3RD READING AMENDMENTS CONCURRED	87	12
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 408		
	EFFECTIVE DATE: 10/01/95		

HB 233 INTRODUCED BY KNOX, ET AL.

PROVIDE FOR DISSOLUTION OF A K-12 SCHOOL DISTRICT

1/16	INTRODUCED		
1/16	FIRST READING		
1/16	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/23	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	99	
2/20	3RD READING PASSED	98	
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/10	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	48	

House BILL NO. 232

INTRODUCED BY Jore

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A WRITTEN STATEMENT OF A SHERIFF'S CAUSE FOR DENIAL OF A CONCEALED WEAPON PERMIT BE GIVEN TO THE APPLICANT; CLARIFYING THE APPEAL OF THE DENIAL OF A PERMIT; ALLOWING THE FAMILIARITY WITH FIREARMS PREREQUISITE TO A PERMIT TO BE SATISFIED BY THE APPLICANT PHYSICALLY SHOWING THE SHERIFF OR THE SHERIFF'S DESIGNEE THAT THE APPLICANT KNOWS HOW TO HANDLE FIREARMS; ALLOWING THE GOVERNOR TO NEGOTIATE CONCEALED WEAPON PERMIT RECIPROCITY AGREEMENTS WITH OTHER STATES AND TO ESTABLISH AN ADVISORY COUNCIL; ADDRESSING THE FEDERAL BACKGROUND CHECK AND 5-DAY WAITING PERIOD REQUIREMENTS FOR A HANDGUN PURCHASE; AMENDING SECTIONS 45-8-321 AND 45-8-324, MCA; AND PROVIDING CONTINGENT TERMINATION DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court ~~in any state~~ of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious

bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless ~~he~~ the applicant has been pard or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for ~~his~~ the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in ~~a court of~~ any state or ~~in a~~ federal c to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or o incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or o conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in ~~a court of~~ any state or ~~in a~~ federal c to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order o court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff h reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled otherwise may be a threat to the peace and good order of the community to the extent that the applica should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff sh give the applicant a written statement of the reasonable cause upon which the denial is based and o basis for and evidence supporting the reasonable cause finding.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, b required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the departme of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the departme of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm."

Section 2. Section 45-8-324, MCA, is amended to read:

"**45-8-324. Appeal.** The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court, which may consider and determine facts as well as law and which is not bound by any factual, legal, or other determination of the sheriff, and from that court to the Montana supreme court. To the extent applicable, Title 25, chapter 33, governs the appeal."

NEW SECTION. **Section 3. Concealed weapon permit reciprocity agreements -- advisory council.** (1) The governor may negotiate concealed weapon permit reciprocity agreements with other states that have concealed weapon permit laws similar to those of Montana. The agreements may provide that a permit valid in the state that granted it is valid in a state with which the granting state has reciprocity. The agreements must provide that a permittee of the granting state is subject to all applicable concealed weapon laws when in another state that has reciprocity with the granting state.

(2) The governor may establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue reciprocity issues and agreements.

NEW SECTION. **Section 4. Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period.** A person possessing a concealed weapon permit is:

(1) considered to have a permit constituting completion of the background check required by 18 U.S.C. 921 through 925A; and

(2) is exempt from that act's 5-day waiting period for the purchase of a handgun.

NEW SECTION. **Section 5. Contingent termination.** (1) [Section 4(1)] terminates on the date of an executive order of the governor certifying that the federal background check referred to in that subsection is no longer required under federal statutory or case law.

(2) [Section 4(2)] terminates on the date of an executive order of the governor certifying that the federal 5-day waiting period referred to in that subsection is no longer required under federal statutory or case law.

NEW SECTION. **Section 6. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [sections 3 and 4].

-END-

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0214	KOTTEL, DEB 1/14	2/03	GENERALLY REVISE LAWS RE: REGISTRATION OF SEXUAL & VIOLENT OFFENDERS	PASS AS AMENDED 2/11 VOTE: 17-1		2/13
HB0217	JOHNSON, JOHN 1/16	1/26	REQUIRE THAT SCHOOL EMPLOYEES BE TOLD THEY'RE LEGALLY PROTECTED FROM ASSAULT	PASS AS AMENDED 2/8 VOTE: 19-0		2/10
HB0232	JORE, RICK 1/16	1/26	REVISE CONCEALED WEAPONS PERMIT LAW	DO PASS 1/31 VOTE: 16-3		2/01
HB0234	HIBBARD, CHASE 1/16		REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE	VOTE:	BUSINESS & LABOR	
HB0240	SOFT, LOREN 1/17	1/26	ESTABLISH JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION	PASS AS AMENDED 2/16 VOTE: 18-0		2/17
HB0244	MENAHAN, RED 1/17	1/30	DETENTION WHILE AWAITING SENTENCE OR DURING APPEAL FOR CERTAIN OFFENSES	TABLED ON 02/02 VOTE: 13-6		
HB0250	MCCULLOCH, LINDA 1/17	1/30	REVISE SANCTIONS FOR MINOR TRAFFIC OFFENSES	PASS AS AMENDED 1/30 VOTE: 15-4		1/31
HB0253	BARNHART, BEVERLY 1/18	2/02	ALLOW COURT ORDER EDUCATIONAL PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN	PASS AS AMENDED 2/8 VOTE: 19-0		2/10
HB0256	SOMERVILLE, ROGER 1/18	2/03	INCREASE DRUNK DRIVING PENALTIES; USE SOME FINES FOR JAWS OF LIFE TOOLS POSTPONE ACTION 2/9	PASS AS AMENDED 2/16 VOTE: 18-1		2/17
HB0258	BOHLINGER, JOHN 1/18	2/07	CREATE CRIMINAL OFFENSE FOR CONCEALED WEAPON ON SCHOOL PROPERTY	TABLED ON 02/11 VOTE: 11-8		
HB0271	MCCULLOCH, LINDA 1/18	2/03	REVISE SUMMARY DISSOLUTIONS - ALLOW SUMM. DISSOLUTION WITHOUT HEARING POSTPONE ACTION 2/8	TABLED ON 02/11 VOTE: 13-6		
HB0290	DEBRUYCKER, ROGER 1/20	2/01	ISOLATED LAND ACCESS PROCEDURE	TABLED ON 02/08 VOTE: 19-0		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 26, 1995, at 8:00 AM

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 217, HB 232, HB 240, HB 302
Executive Action: NONE

{Tape: 2; Side: A}

Closing by Sponsor:

REP. JOHNSON explained that the manual which was referred to is a compendium of state law which is furnished by OPI. It is not a manual of instructions, but it lists all the laws relative to education. He said **REP. GRIMES** had a good point relative to (g) which deals with false alarms that there is a penalty which is much stronger as well as the penalty for transmitting a false report for an impending explosion. He agreed to referencing that to those portions in title 45. He also did not object to changes suggested by **REP. HURDLE**, but urged the committee to view the bill favorably.

HEARING ON HB 232

Opening Statement by Sponsor:

REP. RICK JORE, HD 73, presented HB 232 as a revision to the concealed weapons permit application process. He went through the specifics of the bill. It asks for a written statement of a sheriff's cause for a denial of a concealed weapon permit to be given to the applicant. The bill clarifies the appeal of the denial of a permit. Some language is added to alleviate some of the workload for sheriffs in determining the familiarity of the applicant with firearms. The bill establishes a section whereby the governor can negotiate reciprocity agreements with other states regarding concealed weapons. The bill addresses the federal background check and the five-day waiting period requirements.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, Citizen Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, Big Sky Practical Shooting Club, said he was not speaking on behalf of the National Rifle Association (NRA) at this time. He gave history concerning this bill and previously presented and passed bills especially as they addressed discretionary control by issuing agents. It is believed that the sheriff should have discretion as long as it is not abused, but they believe it would be a healthy balance for the sheriff to notify his reason for the denial. He said the appeal process was unspecified in prior legislation and it has caused some problems. They are suggesting that people who appeal through the district court be referred to the de novo process. He said the training problem is significant in Montana and training instructors are difficult to find as NRA is no longer training instructors. They are proposing some solutions to alleviate this shortage. He said many other states in America are passing laws similar to Montana's and this bill will help work out reciprocity with states having similar laws so that

permits issued in Montana would be honored in other states. The bill has the provision for the governor to work that out. The final portion of the bill exempts permit holders from provisions of the Brady law's five-day wait for handguns. The reason has to do with the thoroughness of the sheriff's background check which is more thorough than for Brady. They believe the sheriff's background check should serve to fulfill the Brady requirement.

{Tape: 2; Side: B; Approx. Counter: 19.8}

Stan Frasier supported the bill and described what happens at the local level and why he believed there should be more control instituted over the sheriffs. He believes the sheriffs have a wide latitude of discretion and very little control over them. He said the sheriff had expressed to him years ago that he doesn't believe in people carrying firearms and that many of the processes are designed to dissuade people from applying for permits.

Chuck Grazier voiced his support for this bill. He discussed the requirements which make it a lengthy process and his desire to change that. He also discussed the provision for the governor to negotiate reciprocal agreements with other states as being attractive to him and why that was so. **EXHIBIT 4**

Paul Glassco said the process made it very difficult for him to receive his permit. He felt the local sheriff had impeded the progress in obtaining his permit. He also told how the current law interferes with his ability to conduct business which necessitates his handling large sums of cash in that he cannot carry his weapon into the bank as a protection between the car and the bank.

William Hollenbaugh supported HB 232 particularly the section dealing with reciprocity and the section dealing with the exemption from the five-day waiting period. He requested the committee pass the legislation.

Alfred "Bud" Elwell felt that many of the laws are being changed which have the effect of creating a new class of criminals out of anyone who possesses a firearm. He said that the only way to counteract this was to create a new class of citizen and he believed that HB 232 would help accomplish that.

Stan Frasier, without objection from the committee, added to his previous testimony. He said the sheriff had taken longer than the allowed 60 days in his case to complete the permit process and he was unable to find anybody else in the justice system to make the sheriff do his duty in this regard.

Informational Testimony:

CHAIRMAN CLARK read into the record a letter of support by **REP. AUBYN CURTISS,** who had to leave the hearing. **EXHIBIT 5**

A letter from Amy Elliott, NRA, was submitted as support of HB 232. **EXHIBIT 6**

James Hamman sent a letter of support for HB 232. **EXHIBIT 7**

Opponents' Testimony:

Bill Fleiner, Undersheriff, Lewis and Clark County, Montana Sheriffs and Peace Officers Association, recounted the previous history of concealed weapons amendments brought before the legislative sessions. He said that after a divisive session in 1989, law enforcement concealed weapons proponents came together to negotiate existing law. He said the changes in HB 232 were issues discarded in the course of the negotiations in 1991 and were presented in the 1993 session where they were "killed" in the Senate Judiciary Committee. He said the association members feel the spirit and intent of the negotiations has been violated. Neither side got everything they wanted, but were able to come to a middle-of-the-road understanding which is represented in current law. He said that since it is the intent to bring forward the issues set aside for valid reasons in the negotiations, they must revert back to their original stand that:

a. Hunters, fishermen, recreationalists while engaged in those activities should be allowed to carry concealed weapons,

b. There are legitimate business people who have a need to carry a concealed weapon while involved in their business activity, and

c. All other carrying of a concealed weapon should be illegal.

HB 232 would require the sheriff to give persons involved in criminal activities investigative information should the suspect apply for a concealed weapon permit and be denied. He stated this is not a minor detail. He said there was a question of constitutionality in the changes in the appeal process because it limits the discretion of the court and appears to create a different standard for burden of proof.

He said that in 1993 there were 837 permits on record at the state identification bureau. In 1994 there were 1,369 permits on record and as of January 1, 1995, there are 2,925 concealed permits with the bureau at this time. He proposed that with this rapid increase in permits, there cannot be very many denials and it indicates that the intent of the law is being fulfilled by sheriffs. If the sheriffs are remiss in their duties, it is for the citizens of each county to decide the priority of the issue when the sheriff seeks re-election. They also have some displeasure with some areas of the existing law. But because they are not the ones bringing this proposed legislation and they are being true to the spirit of the former negotiations, they

will have to defend themselves. Obtaining a permit is not a right but rather a privilege. Amending the law to reverse right versus privilege is a poor method, he said, and urged the committee to "kill" HB 232.

He then addressed the issues which he felt were an effort to discredit Sheriff O'Reilly and perhaps the association. He rebutted the implication that the sheriff does not support the right to bear arms. He said this is not an issue of the right to bear arms. He said that very few permits are delayed but when they occur it is the result of the FBI background checks. FBI background checks are no longer being conducted. He then gave reasons for the other issues raised by proponents regarding the local sheriff's department which gave rise to questions about the efficiency of the permit process.

Questions From Committee Members and Responses:

REP. KOTTEL asked when someone has been permitted to carry a concealed weapon for a period if there were any provisions for revocation of the permit.

REP. JORE referred the question to **Mr. Marbut.**

Mr. Marbut answered that there is a revocation portion for the permit under 45-8-323, MCA.

REP. KOTTEL asked if the permit was a certificate which was carried.

Mr. Marbut replied that it is a laminated card with a photo.

REP. KOTTEL asked what happens if a person's qualifications change after having been issued a permit.

Mr. Marbut said he did not think there were methods for discovery by an issuing authority to know that a permit holder had fallen below the eligibility standards.

REP. KOTTEL asked if she understood that under section 4 of the bill a super class of individuals how have that permit who could go into any store and be exempt from the five-day waiting period.

Mr. Marbut did not see them as a super class of citizens. The intent is to say that once they have a concealed weapons permit they have satisfied the requirement because they have had a much more thorough background check than someone who would just get a background check which is very cursory under the Brady law. He added that that is allowed under the federal Brady law.

REP. KOTTEL wanted to make the point that someone who may have fallen below the standards could apply and with no further requirement for a background check to discover a recently

developed mental illness, commission of a violent crime or if they had been civilly committed for drug-related offenses.

Mr. Marbut said theoretically that would be possible, but the question could be addressed in terms of national experience. Especially in Florida as well as in other states where this type of law has been enacted, there has been a lot of study on this issue and the results have been that problems with permitees have been so low as to shock those conducting the investigations.

REP. KOTTEL directed his attention to lines 8, 9, and 10 on page 3. She questioned the sheriff delegating authority for conducting the test. She wanted to know if the statute contains any meaningful standards to constrain agency discretion. Her second question concerned delegation to private parties to regulate other private parties for this generally makes the delegation of authority more vulnerable to constitutional attack. This applies where the legislature delegates the authority to the sheriff who delegates his authority to a private entity to make decisions over whether another private individual has the right to carry the concealed weapon. She wanted to know if he saw any problem constitutionally in that broad delegation of power.

Mr. Marbut said that if this were the only way the applicant could satisfy the training requirement, he would share her concern. However, this is one of several options the applicant may exercise. Because it is an option and not a mandate and because most of the sheriffs will treat it reasonably, he did not see it as a realistic problem.

{Tape: 2; Side: A; Approx. Counter: 55.7}

REP. KOTTEL directed attention to lines 15, 16, and 17. She followed up on the idea of the separation of branch of government as it relates to someone seeking judicial review of an agency's determination which is generally limited to questions of fact to only overturning the agency's decision if those facts are clearly erroneous on the face of the record taken as a whole. She said that what they were doing in this section is giving the judicial branch greater power than it has ever had in second guessing an agency's decision based on questions of fact. She asked if they were comfortable with doing that and with the shift in the balance of powers between the two branches.

Mr. Marbut said if they were talking about something between the governor's office and the supreme court, that would be a greater issue. From his experience in local matters, the district court judges are in touch with the community and reasonable about handling things. He was not uncomfortable giving them the ability to review what decision the sheriff had made. There is the de novo option of appeal from district court which is all standard fare in Montana. He said if it was of concern, then legislation to correct it would be in order, but they are tying into an already established process.

REP. HURDLE asked if anybody who has been in the military service was qualified to use firearms.

Mr. Marbut said he did not know if they all are, but they are saying that if they can provide evidence that they qualify to use firearms from the military that ought to be sufficient.

REP. HURDLE asked if they had to show what kind of discharge they had.

Mr. Marbut was not certain about that. Under the current law, people with a dishonorable discharge are not authorized to apply for a concealed weapon permit. But otherwise, if their military qualification records are on a document other than their discharge papers, then they would not be required to show their discharge, but they would sign a form stating they had an honorable discharge. He believed that firearms qualifications were noted on their discharge papers.

REP. HURDLE asked if they have to show that they have had other than a dishonorable discharge when they apply.

Mr. Marbut replied that they are not eligible to even apply for a permit if they have had a dishonorable discharge and if they apply and falsify their application, that is a criminal offense.

REP. HURDLE in looking at section 5 asked if the person to whom the sheriff might delegate authority might charge a fee for the service.

Mr. Marbut said they deliberately left that open thinking that the free market ought to prevail there.

REP. HURDLE asked if this delegated authority has to have any qualifications.

Mr. Marbut replied that they had not specified any qualifications assuming the sheriff is not going to accept results of a test from someone who is not qualified. They have the greatest respect for sheriffs in that regard.

REP. HURDLE said she was confused about his attitude toward sheriffs because they trust them so much in one area and so little in other areas.

Mr. Marbut admitted a "split personality" about that. He recounted his positive experience with his local sheriff in Missoula County. In the context of delegation sheriffs are more likely tend to be restrictive and be very careful from whom they would accept test results.

REP. HURDLE retorted, "Just as they would be very careful who they would give concealed weapons to, right?"

Mr. Marbut answered that they don't give concealed weapons to anybody, they issue permits.

REP. SOFT addressed the significant increase in permit applications and said that it appears there hasn't been a significant hold up in the process although there are some isolated incidents. He also addressed testimony that the issues in this bill have been brought up in previous sessions. Most important to him was that **Undersheriff Fleiner** said they had negotiated in good faith to develop the current law and that now these issues were being brought back to the table and in doing so violating the good faith negotiations. He asked **Mr. Marbut** to respond to those statements.

Mr. Marbut said that the negotiations conducted over these issues were conducted during the 1991 session. They did have an agreement with the Montana Sheriffs and Peace Officers Association. They brought the results of that agreement to this committee. The chairman of this committee was a part of those negotiations. That negotiated agreement was breached then. The lobbyists of the association insisted on some restrictions in the bill which were not a part of the negotiated agreement and those restrictions became a part of the law because they prevailed.

{Tape: 2; Side: B}

He did not feel what was on the table four years ago is a big issue but rather what they are asking for has a reasonable basis and is good public policy. He said he knew they had the support of a good many Montana sheriffs, though from listening to testimony, he gathered that the association has taken a position in opposition to this bill. He suggested asking **Undersheriff Fleiner** if they have actually voted on a position. He was not concerned about the alleged breaches because if that were, so they weren't the first to do it and if it weren't so, they feel there are good public policy reasons to come to the legislature with the proposal to solve problems which exist.

CHAIRMAN CLARK asked **Undersheriff Fleiner** if he was representing the Montana Sheriffs and Peace Officers Association in this hearing as their representative or lobbyist.

Undersheriff Fleiner answered, "Yes."

CHAIRMAN CLARK asked if he polled the members as to their feelings on this bill before today.

Undersheriff Fleiner asked, "You mean every individual sheriff?"

CHAIRMAN CLARK said, "Every individual member of your association."

Undersheriff Fleiner answered, "No, we have not, this has been a longstanding position of the association. In 1991 when we

entered into those negotiations, and I don't agree with **Mr. Marbut** in his recollections of those negotiations, because I was the one that negotiated for the sheriffs and peace officers during that process. We strayed from the position on the two parts that I testified to in those negotiations because of the divisiveness. and this is a misdemeanor, and the problems it was creating with the legislature, we tried to find the middle of the road. Much like the Brady bill, sheriffs have differing opinions about the issue. Those who do not support it have gone out in front of the Brady bill to counter it; the other side of the position that sheriffs will tell you is that you as elected officials in this legislature and in congress who are sent by the citizenry to enact laws, it is not our position to set the standard, but we are held accountable for it. So it is not for us to say what we will and what we won't enforce. You determine that.....so, no, there has not been a poll about this, there is differing opinion among sheriffs. For the most part, however, from what we understand from the membership of the sheriffs that I did talk to before coming here today over the last couple of days, they believe foremost on the two point I made on the issuance of concealed weapons. We are willing to stand on what is currently in law and I believe that it is working well by the number of permits being issued. They may be voicing their discontent with it because it is not perfect."

CHAIRMAN CLARK asked if he had ever since this first came about in 1989 and was defeated here polled the members on this issue. He stated for the record the negotiations were originally initiated in October 1990 prior to the '91 session.

Undersheriff Fleiner responded, "Oh, yes we have. Oh, yes we did." And on non-legislative years, the association holds 10 meetings across the state. They send out questionnaires and talk about these issues. In 1994 they held those 10 meetings across the state and talked about concealed weapons and the position he presented is the position of those members that they gave at that time.

CHAIRMAN CLARK asked for a copy of the results of that poll which was held in the early stages of the concealed weapons issue. Secondly, he said that **Undersheriff Fleiner** said he had talked to sheriffs. He wanted to know if the association represents not only sheriffs but also deputies and other people involved in law enforcement.

Undersheriff Fleiner said it does, but this particular process speaks to the responsibility of the sheriff.

CHAIRMAN CLARK asked how many permits had been issued in Lewis and Clark County.

Undersheriff Fleiner said that 135 had been issued.

CHAIRMAN CLARK asked if he or the sheriff had ever had to revoke a permit in this county and if so, how many.

Undersheriff Fleiner said they had. He believed they had revoked two. Statewide there have been 12 revoked, eight as the result of crimes, two deceased and two moved.

CHAIRMAN CLARK again addressed the negotiations and asked if the agreement that was struck prior to the session included that sheriffs would not delay the issuance beyond 60 days but try to get them through quickly.

Undersheriff Fleiner said, "And I think we have done that."

CHAIRMAN CLARK asked if he would agree that perhaps the political atmosphere based on what was happening on a nationwide basis may have some impact on the increase in the numbers of permit applications.

Undersheriff Fleiner said there was no question about that. The majority of concern prior to what is existing statute was related to hunters, recreationalists and fishermen. When the issue of the Brady bill came about with the banning of assault weapons and the waiting period there was an increase in applications.

CHAIRMAN CLARK asked his next question for the benefit of the people who were not in the legislature when the original bill was debated and passed. He wanted to know what the association's reasoning for limiting business people who had to carry large amounts of money from carrying a firearm into a bank .

Undersheriff Fleiner said they believe there were legitimate times when business people should be able to carry a concealed weapon. They eliminated institutions, places where alcohol is served and public meetings in government buildings. In a banking institution that is already at a level of expectation of threat or at least trained to be aware of a person who might be a threat and a person walked in with a concealed weapon, the teller would respond and there is an established operation procedure for law enforcement response which would create a high profile situation. It was a preventive measure to eliminate banks.

CHAIRMAN CLARK asked if the weapon were concealed, how would the teller know that the person had it.

Undersheriff Fleiner said that may or may not work. It is difficult even for law enforcement people to carry a concealed weapon. He said, "The impression of it, if he bends over, any number of things, and the fear would be that he is standing in line, moving toward the teller that would create the alarm. If it is not seen, great, that's the purpose of it, but if it is seen, we are going to have a problem."

CHAIRMAN CLARK agreed on some of the points if the weapon is seen. His point was that in long term law enforcement experience, people never knew they were carrying concealed weapons. He felt the incidence of being seen was rare.

Undersheriff Fleiner responded that in the circumstance where it would be seen, it was a good preventive measure.

CHAIRMAN CLARK pointed out that most business people bank at certain banks and that most employees of the bank know these people whether they have a concealed weapon with them or not.

Undersheriff Fleiner was not worried about the employees, but he did not agree that the other people doing business there know all who are coming and going. The problem would be created by one of those people doing business.

REP. BOHARSKI asked **Undersheriff Fleiner** to clarify for him and for the sponsor of the bill where it sounded in testimony as if the sponsor was breaching some sort of an arrangement that had been reached. And since this is his first session, he couldn't possibly have been a party to that prior arrangement. "You weren't suggesting he was a party to anything along those lines, were you?"

Undersheriff Fleiner did not understand the question.

CHAIRMAN CLARK repeated the intent of the question.

Undersheriff Fleiner said, "Oh, no, not at all, the sponsor doesn't have anything to do with this at all. I think the sponsor is trying to do the right thing."

REP. BOHARSKI asked about the new language on page 2 which requires a written statement of reasonable cause for denial of a permit. He asked for an exposition on that portion.

Undersheriff Fleiner said that if they have to give a written reason for denial, and it is based on supportive evidence, it opens the door to anyone who wants to know if they are being investigated for criminal activity along with the evidence which supports it. Drug dealers most notably would be included.

REP. BOHARSKI asked if it seemed like under the current language without that, there is an opportunity for political reasons to be used and without a written denial a sheriff could deny the permit based on those political reasons.

Undersheriff Fleiner said he wouldn't deny there could be mischief here. The sheriff in the county is the primary law enforcement officer, the county attorney is the legal representative of the county. The Attorney General is the chief law enforcement officer of the state and they have discouraged as much as possible that type of mischief in personal biases and

influences that a sheriff may have. He felt that current law is the middle of the road which includes an appeal process for judicial review and he felt if they follow through with that process, it will work fine.

REP BOHARSKI asked if to his knowledge his department had ever denied a permit application for any reason they could not put in writing.

Undersheriff Fleiner answered, "Yes, we have."

REP. BOHARSKI asked how many times.

Undersheriff Fleiner said they currently have 135 application on file and he believed there had only been three occasions where they have denied the permit. One was related to an individual who was put in protective custody, but ultimately the person wasn't adjudicated as mentally ill and there were more details involved in the report.

REP. BOHARSKI said in the example the person would have known and there wouldn't have been any problem to tell them. He couldn't see any reason why a written statement could not have been issued.

Undersheriff Fleiner said they did not tell him at the time he was placed in protective custody that he wasn't going to get a concealed weapon permit. They denied the permit on those grounds and a series of other things, but at a time when the sheriff begins denying permits in writing questioning the mental capacity of individuals which he is not trained to do, it sets up a counterproductive situation.

REP. BOHARSKI asked him to read lines 13 and 14 on page 2 which indicated that the legislature has already been given the authority to exercise discretion to deny the concealed weapons permit. He could not see why there would be a problem issuing a written denial.

Undersheriff Fleiner said he thought it would set up a situation for district court and supreme court interpretation for overturning those types of judgements and did not feel it was in their best interest to do that. In the appeal process a district can review the sheriff's decision and the reasons for it. If the decision is overturned, that process is already in place and works well.

{Tape: 2; Side: B; Approx. Counter: 31.8}

<u>Closing by Sponsor</u>:

REP. JORE addressed the question of the law being adequate as it is in light of the significant increase in permits. He felt that it is no problem in certain counties, but in others there is a

need to make those sheriffs more accountable in the denial process. Of significance is that statewide only 12 permits have been revoked, two were deceased and two moved and there are no statistics showing that anybody with a concealed permit exhibited themselves to be a danger to themselves or to any member of society. He asked for a favorable view of this bill.

CHAIRMAN CLARK closed the hearing on HB 232.

Motion: **REP. SOFT MOVED TO ADJOURN.**

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/26/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ late	✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ late	~~✓~~	
Rep. Loren Soft	✓	~~✓~~	
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 4
DATE 1/26/95
HB 232

HOUSE OF REPRESENTATIVES

Judiciary -COMMITTEE

WITNESS STATEMENT HB 232

PLEASE PRINT

NAME CHARLES GRAZIER BUDGET

ADDRESS 19155 WAMPLI LANE, HUSON MT DATE 1-26-95

WHOM DO YOU REPRESENT? SELF

SUPPORT ✓ OPPOSE AMEND

COMMENTS: RE: H.B. 232

PRESENT LAW REQUIRES GUN SAFETY CLASS BUT DOES NOT PROVIDE THESE CLASSES. AUTHORIZING THE SHERIFF TO DESIGNATE INSTRUCTORS FOR THIS PURPOSE WOULD HELP GUN PERMIT APPLICANTS TO FULFILL THIS REQUIREMENT.

IN THE MODERN MOBILE SOCIETY WHICH WE LIVE IN, IT IS OFTEN DESIRABLE TO CARRY A FIREARM ACROSS STATE LINES. WITH THE NUMEROUS GUN LAW'S ON THE BOOKS AND BECAUSE THEY VARY SO MUCH FROM ONE STATE TO ANOTHER IT MAKE SENSE TO HAVE RECIPRICAL AGREEMENTS WITH OTHER STATES

HR:1993
CS16

EXHIBIT 5
DATE 1/26/95
HB 232

I want to go on record as a supporter of House Bill 232. An individual with whom our family is well acquainted was turned down when applying for a permit for no other reason than the obvious bias of the [redacted] SHERIFF.

He is a law-abiding citizen and an inventor who travels a lot and has reason to have concern for his personal safety because of the [redacted] technological and professional ramifications relative to his field of endeavor.

He finally acquired the permit, but not without experiencing much frustration and exhibiting much persistance.

Aubyn Curtiss
ND 81

EXHIBIT 6
DATE 1/26/95
HB 232

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VA 22030-7400

MEMORANDUM IN SUPPORT

TO: MEMBERS OF MONTANA HOUSE JUDICIARY
FR: AMY ELLIOTT, NATIONAL RIFLE ASSOCIATION
RE: HB 232
DATE: 01/26/95

****

On behalf of the members of the National Rifle Association in Montana, I respectfully submit our support of HB 232 for the following reasons.

1. **Affords applicant who has been denied the opportunity to rebut the case made against them.**

An open and honest government certainly requires that a permit applicant, who is denied a license due to a Sheriff's statement, be afforded the opportunity to rebut false or misleading information in the appeals process. This is not possible under the current system.

If an applicant has been denied based on what the local sheriff may determine as reasonable cause, it is their right to know exactly what that reasonable cause is.

2. **Allows the local sheriff to determine familiarity with a firearm.**

Unfortunately, there are simply not enough firearms safety courses taught throughout Montana. This especially affects those who live in smaller, more rural towns. Also, some of theses courses may be cost prohibitive to many law-abiding Montanans who have a vast knowledge of firearms. Allowing applicants to take a test given by their local sheriff will alleviate these problems.

EXHIBIT 7
DATE 1/26/95
HB 232

January 26, 1995

My name is James S. Hamman, 140 Hamman Road, Clancy, Montana 59634. I am a medically retired police patrolman with fourteen years of street experience, and I urge you to vote for House Bill 232 for the following reasons.

First it seems only fair that an applicant for a concealed carry permit being denied a permit be given a written reason why the application was denied by the sheriff who ruled negatively on the application.

Second it seems only logical for the appeal process to function at all the district court would have to consider evidence other than a negative ruling by the sheriff who originally turned down the application and not be bound entirely by that sheriffs findings.

Third reciprocity agreements with other states having similar laws need to be negotiated.

Fourth the exemption of concealed weapon permittee from a background check and waiting period is logical for two reasons. First the individual has already gone through an extensive background check to obtain the permit. Thus to require an additional check is a waste of manpower and money. Second waiting periods are to provide a cooling off period and thus in theory prevent crimes of passion. Is it not logical to assume a person with a concealed carry permit will already own at least one firearm. Thus the cooling off period argument becomes ridiculous.

Thank you for your consideration.

James S. Hamman

James S. Hamman

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-26-95

BILL NO. HB 232 SPONSOR(S) Rep. Jore

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Fleiner	Mt Sheriffs & Peace Officers		X
W. C. Hollenbaugh	Self	X	
Charles Grazier	Self	X	
Stan Frasier	Self	X	
Gary Marbut	MSSA, GOA, CCRKBA, WMFGA, BSPSC	X	
A.M. (Bud) Elwell	WCSM/NWAC	X	
Paul Glassco	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 31, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 36, HB 296, HB 311
Executive Action:	SB 29 BE CONCURRED IN AS AMENDED
	HB 135 DO PASS AS AMENDED
	HB 177 DO PASS AS AMENDED
	HB 232 DO PASS

EXECUTIVE ACTION ON HB 135

Motion: REP. DIANA WYATT MOVED HB 135 DO PASS.

Motion: REP. HURDLE MOVED TO AMEND PAGE 2, LINE 20 BY STRIKING "AND" AND TO INSERT, "A LINE ITEM OR OTHER SPECIFIC."

Discussion: Mr. MacMaster explained the amendment.

Vote: The motion carried unanimously, 19 - 0.

Motion/Vote: REP. LIZ SMITH MOVED HB 135 DO PASS AS AMENDED. The motion carried 18 - 1, REP. MC GEE voting no.

EXECUTIVE ACTION ON HB 232

Motion: REP. WILLIAM BOHARSKI MOVED HB 232 DO PASS.

Discussion: REP. HURDLE asked if sufficient background check is accomplished with a person who has past military service.

CHAIRMAN BOB CLARK said background check is not the issue here.

REP. HURDLE said section 3 seems to be worded in such a way that a person can demonstrate familiarity with a firearm by a variety of methods or, evidence that the applicant has had military service. She pointed out that there was no requirement to show that the discharge was honorable.

CHAIRMAN CLARK said when they do the background check that is taken into consideration as part of it. If someone had a less than honorable discharge, they would not even get to the point where they would have to show their qualifications.

REP. HURDLE followed up with the comment that it still looked to her as if on line 30 with the word, "or," as if an honorable discharge exempted them from a background check.

REP. BOHARSKI said that language she was reading at the top of page 3 goes with subsection 3 which outlines the qualifications for familiarity with the firearm and doesn't have anything to do with the background check.

REP. SMITH said her local sheriff's department was in opposition to the bill primarily because of the language on page 2, lines 16 through 18 and also on page 3. She felt this language sets up an interference of what is being requested of law enforcement as well as placing a tremendous burden on them to be cognizant of those who may be engaged in unethical behavior and then make that judgment. She would not be in support of this bill without deleting those sections.

REP. MC GEE suggested that a denial without explanation would lead the applicant to wonder why it was denied.

REP. SMITH agreed.

REP. MC GEE explained that these sections simply state that the sheriff will give the reason for the denial.

REP. SMITH said that she would continue to support her local law enforcement officers by opposing the bill.

CHAIRMAN CLARK said her argument was precisely the reason for the 60-day written explanation. The 60 days allows time to complete the investigation for the permit application. He quoted, "If you can't write it and cite it, don't say it."

REP. ANDERSON asked about the individual who is the subject of an ongoing investigation when it may take longer than 60 days and they do not want to inform the person that they are the subject of an investigation.

CHAIRMAN CLARK thought that argument is refuted by the 60 days. If the sheriff denies the issuance of the permit, he only has to state that the investigation is continuing. If they protest that explanation, they can go to court. If the court orders it so, they will have to divulge why the permit is denied. There is nothing to prevent that sheriff from saying the background investigation is not complete.

REP. WYATT felt this would be setting up a appeal process for which everyone denied a permit can go into court. She asked if that was correct.

CHAIRMAN CLARK said that is no different from current practice.

REP. WYATT said, "But the state is stipulating the reason, so they are giving their evidence in advance for the defense, correct?"

REP. ANDERSON did not think they would be foolish enough to do that. He agreed with the Chairman that the reasons given for not issuing a concealed weapons permit could be couched in terms vague enough that the person wouldn't realize they were a suspect of an investigation.

REP. SMITH read a statement on behalf of **REP. AUBYN CURTISS** which affirmed the bill.

REP. WYATT turned to page 3, lines 10 and 11 to address her concern about the delegation of authority to a non-law enforcement person.

CHAIRMAN CLARK gave an example of a deputy sheriff having a firearms instructors' business and the sheriff delegating this to them. He asked, "What then?"

REP. WYATT said there was no question that he would be competent, but she questioned that he would not be representing the government when he makes that determination. Her concern was that the instructor be acting as a law enforcement officer while they are doing it and not as a sideline.

REP. CLIFF TREXLER said this was aiming at the situation existing in certain communities where several give gun courses. At the end of the course, a certificate is issued. He felt they were giving the authority to the sheriff to appoint the instructor. The certificate proves competency to use the gun. It has nothing to do with background checks.

REP. BILL TASH was comfortable to leave the bill the way it is because the sheriff is the one with the responsibility and he would not delegate it to someone who would not be responsible. The sheriff still has to sign off on it.

REP. BOHARSKI said other sections of the bill allow safety training courses to be conducted by someone other than law enforcement personnel.

REP. HURDLE said she also had a concern about this section because she did not feel it was "our" place to delegate that kind of authority. She felt there was a potential for abuse in it with a sheriff who would not exercise good judgment in delegating the responsibility.

Motion: **REP. HURDLE MOVED TO STRIKE SECTION 5, LINES 8, 9, 10, AND 11 ON PAGE 3.**

Discussion: **REP. CURTISS** opposed the amendment because the legislature delegates far more authority every day and because sheriffs are elected to discharge their responsibility. If there is no confidence in them, she thought they were in a poor position.

Vote: **The motion failed, 5 - 14, REPS. WYATT, BILL CAREY, HURDLE, KOTTEL and SMITH voting aye.**

Discussion: **REP. CAREY** said it was clear to him that the intent of the bill was to make it easier to acquire concealed firearms. He asked if he was correct.

CHAIRMAN CLARK corrected the statement by saying, "to carry a concealed firearm."

REP. CAREY believed it was the wrong way to go. He recalled the testimony which showed the increase in permits issued. He

personally felt that the more people carry concealed weapons, the more dangerous the society and would prefer to see an opposite direction being taken and was strongly opposed to the bill.

REP. LOREN SOFT echoed the previous statement and stated his opposition to it.

REP. BOHARSKI viewed the bill as being simple. He could see no big change except to require a reason in writing for the denial of a permit. He said section 5 was a mutual agreement section and was completely permissive. He could recall no opposition from the court system and there was one opponent, an undersheriff from Lewis and Clark County. Everyone seemed to agree that the reciprocity agreements were a good idea and the exceptions from the Brady bill drew no objection. He felt that the bill doesn't make anything easier, but rather lightens the duty of some of the difficult responsibilities law enforcement might have later. He remembered the sheriffs in Missoula wanted the bill to pass.

REP. DEBBIE SHEA supported the bill. She had faxed a copy of the bill to her local sheriff and he was very comfortable with it. He was pleased that he needed to put in writing the reason for denial.

REP. TREXLER echoed **REP. SHEA's** remarks. He also had talked with his local sheriff who agreed that the denial of a permit should have a reason that can and should be written.

REP. GRIMES agreed that this didn't need to be made a big issue, but for the record, said he was slightly uncomfortable with page 3, line 25 which provided for the Governor establishing a council. He felt that was redundant and said he "hated the idea of establishing councils all over the place."

CHAIRMAN CLARK explained that the purpose of it is to take the pressure off the Governor so that he can communicate with the other states which have concealed weapons permits and negotiate reciprocity agreements. The council would do the work for the Governor.

Vote: **The motion carried 16 - 3, REPS. CAREY, HURDLE and SOFT voting no.**

EXECUTIVE ACTION ON HB 177

Motion: **REP. WYATT MOVED HB 177 DO PASS.**

Discussion: **REP. ANDERSON** suggested the committee act favorably on this bill. He recounted from personal knowledge how it works.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/31/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 232** (first reading copy -- white) **do pass**.

Signed: Bob Clark

Bob Clark, Chair

Committee Vote:
Yes 16, No 3.

261624SC.Hdh

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0177	KOTTEL, DEB 2/06	3/01		ELIMINATE RT TO TRIAL DE NOVO IN CRIMINAL CASES APPEALED TO DISTRICT COURT 3/02 ADVERSE RPT ADOPT VOTE:		3/03
HB0179	FELAND, GARY 2/07	3/01		ALLOW TRIAL FOR ESCAPE IN ANY COUNTY IF ESCAPEE DOESN'T OBJECT 3/02 CONCUR VOTE:		3/03
HB0186	KASTEN, BETTY LOU 2/21	3/15	3/15	GENERALLY REVISE LAWS RELATED TO CHILD PROTECTIVE SERVICES 3/22 CONCUR AS AMENDED VOTE:		3/23
HB0208	COBB, JOHN 1/31	2/28		PUBLIC DISCLOSURE OF GAMBLING VIOLATION SANCTIONS THAT ARE IMPOSED 3/28 CONCUR VOTE:		3/01
HB0214	KOTTEL, DEB 2/20	3/08	3/13	GENERALLY REVISE LAWS RE: REGISTRATION OF SEXUAL & VIOLENT OFFENDERS 3/14 CONCUR AS AMENDED VOTE:		3/16
HB0217	JOHNSON, JOHN 2/20	3/09		REQUIRE THAT SCHOOL EMPLOYEES BE TOLD THEY'RE LEGALLY PROTECTED FROM ASSAULT TABLED ON 03/09 VOTE:		
HB0231	PAVLOVICH, BOB 2/21	3/06		INCREASE FEE FOR ENTRY OF CONFESSION OF JUDGEMENT 3/06 CONCUR VOTE:		3/07
HB0232	JORE, RICK 2/06	3/03		REVISE CONCEALED WEAPONS PERMIT LAW 3/08 CONCUR AS AMENDED VOTE:		3/09
HB0234	HIBBARD, CHASE	2/03		REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE VOTE:		
HB0234	HIBBARD, CHASE 2/07	3/03		REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE 3/06 ADVERSE RPT ADOPT VOTE:		3/09
HB0240	SOFT, LOREN 2/27	3/13		ESTABLISH JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION 3/14 CONCUR AS AMENDED VOTE:		3/16
HB0250	MCCULLOCH, LINDA 2/03	3/02		REVISE SANCTIONS FOR MINOR TRAFFIC OFFENSES 3/02 CONCUR VOTE:		3/03

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 3, 1995, at 9:00 AM

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 232, HB 234
Executive Action: None

HEARING ON HB 232

Opening Statement by Sponsor:

REPRESENTATIVE RICK JORE, House District 73, Ronan, presented HB 232. This bill is a revision in the statute regarding a permit to carry concealed weapons. Currently the sheriff of each county is responsible for issuing concealed weapon permits. He does so at his discretion. Anytime an applicant is denied a concealed weapon permit, the applicant would be furnished with the reason for denial in writing. If the applicant has shown familiarity with firearms during military service, that would be a

qualification which would demonstrate his ability to operate firearms. The sheriff would have the opportunity to delegate to any person or entity which he desires the authority to test the applicant regarding familiarity with the firearm. Page 3, lines 19-27, allow the governor to establish a council comprised of interested persons to negotiate reciprocity agreements with other states which have similar concealed weapon permit laws. Any individual who has acquired a concealed weapon permit would be exempt from any five-day waiting period due to federal laws.

Proponents' Testimony:

Gary Marbut, President of Montana Shooting Sports Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, Big Sky Practical Shooting Club, spoke in support of HB 232. Prior to 1991, the district court judges issued concealed weapon permits. As of 1989, in over half the counties in Montana, permits were not issued. In the other half of the counties, with exception of Butte-Silver Bow County, a person needed a personal contact to get a permit. A bill was passed in 1991 which required mandatory issuance of permits to people who met necessary qualifications. They switched the authority for issuing permits to the sheriffs. They wanted the district court judges available for an appellate and review role. The Montana Shooting Sports Association has been very active in helping to implement the provisions of that legislation. By tracking the legislation closely, they have learned that there are some problems with the law. HB 232 improves the law and will make this a better law. The first change was the change requiring the sheriff, upon denial of a permit, to disclose his cause for denying the same. In the 1991 Legislature the Senate Judiciary Committee added a new provision at the request of Senator Towe. The Towe amendment put discretion back into the law. They saw this as a mistake which would be subject to abuse. The Towe amendment stated that if the sheriff had reasonable cause to believe that the applicant would constitute a threat to the peace and good order of the community, the sheriff could deny the permit. A sheriff decided that if he issued any permits at all in his county, that would constitute a threat to the peace and good order of the community and, thus he would not issue any permits in the county. Senator Towe stated that was totally outside of what he intended. He wrote a letter to the sheriff explaining this. However, the sheriff believed that was how the law read and he would deny permits based on this. Other sheriffs have imprudently used this provision. This bill requires that if a sheriff denies a permit because of the Towe amendment, they must explain the grounds for denial. The applicant may wish to appeal this to the district court. Law enforcement has some concerns with this requirement. Between 1987 and 1993 there were approximately 188,000 permits issued in the state of Florida. Of those, 18 were revoked due to criminal activity. The original bill required that applicants for permits show that they have familiarity with firearms. People are having trouble finding ways to meet that criteria. There are not very

many firearm safety instructors in Montana, thus there is a bottleneck. This bill provides that if a person qualified with firearms in the military that would show familiarity with firearms. There also is a provision allowing the applicant to be physically tested for safe gun handling skills. They have prepared a draft for the gun safety check. The next change in the bill is with the appeals process. The original bill was silent regarding what process would be used between the sheriff and the district court. This bill states people should follow the process already identified in the law for going from justice to district court. Another change in the bill deals with reciprocity with other states. Currently 14 other states have laws similar to Montana. There are bills before the legislatures of about 10 or 12 other states to enact bills similar to Montana. People in other states with similar laws have gone through the same scrutiny and screening provided in Montana. The negotiation of reciprocity is limited to other states with similar laws. A committee appointed by the governor will negotiate that reciprocity. The final change in the bill deals with exempting people in Montana with concealed weapon permits from the Brady 5-day waiting period. They have had a much more thorough check than what is required under Brady.

A. M. (Bud) Elwell, Montana Weapons Collectors and Northwest Arms Collectors, spoke in support of HB 232. The Brady 5-day waiting period has proven to be detrimental to the gun shows of this state.

Stan Fraiser stated the portion of this bill which interested him is the requirement that a sheriff give a written reason for denying a permit. The sheriff in this county makes it difficult for people to pick up permits.

Opponents' Testimony:

Jim Smith, Montana Sheriffs and Peace Officers Association, spoke in opposition to HB 232. He presented his written testimony, **EXHIBIT 1.** The changes to current law recommended in HB 232 upset the delicate balance regarding the issue of the right to carry a concealed weapon in the state of Montana. If there are problems with the current law, these are local problems which should be handled locally.

Bill Slaughter, Gallatin County Sheriff, Montana Sheriffs and Peace Officers Association, spoke against HB 232. He referred to the section of the bill which requires a written statement for the sheriff's cause for denial of a concealed weapon permit. The 1991 Legislature realized that judgment decisions would need to be made concerning public safety in each county. The sheriff was given that responsibility. In most cases they can advise the applicant about why they were denied. However, there are times they can't. If the applicant is under investigation, notification will jeopardize that investigation as well as the personal safety of officers. He has personally issued permits to

citizens and later those permits were revoked for felony domestic abuse and possession and sale of dangerous drugs. He was elected to make judgments about public safety. He is accountable.

Gregory Hintz, Missoula County Sheriff's Department, Montana Sheriffs and Peace Officers Association, addressed three areas in this bill: minimum training requirements, reciprocity agreement and the exemption from the Brady law requirements. He presented his written testimony, **EXHIBIT 2.** He is assigned to crimes against persons. He takes photographs and processes the permit cards. The applicants use certificates obtained for hunter safety programs and/or military service. The hunter safety program does not cover the use of force and the consequences of taking someone's life. Judgment skills needed to use concealed weapons are not covered as well. Referring to reciprocity, he does not feel comfortable with people from out-of-state having the same rights and privileges as Montanans. They ask that that part be stricken from the bill. In reference to the Brady Law requirement, he commented that this is something they do in Montana. Anyone in Missoula County who has been issued a concealed weapon permit or is a law enforcement officer may walk into any gun dealer's shop and purchase a handgun without the 5-day waiting period.

Troy McGee, Captain - Helena Police Department, Montana Police Protective Association, Montana Association of the Chiefs of Police, spoke in opposition to HB 232.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked if the House passed the bill without consideration of the opponents testimony?

Mr. Marbut stated that was correct. There was one opponent in the hearing who expressed the same concerns.

SENATOR HALLIGAN asked if there was room for negotiation in terms of reciprocity.

Mr. Marbut stated he and **Deputy Hintz** discussed the issue of recognizing military qualifications with firearms. They would not resist an amendment which specified military qualification with handguns as opposed to firearms in general. Regarding the reciprocity provision, it would be up to the governor's advisory council to negotiate reciprocity with other states. The advisory council would include law enforcement. Regarding the Towe amendment, they feel that they have already compromised. People who have permits do not misuse them. They would modify the provision by leaving out the words "and evidence supporting". The applicant who has been denied does not need the evidence. He needs to know the reason so he can appeal to the district court.

SENATOR LINDA NELSON stated there are certain people in our communities who do not have both oars in the water. These people should not be packing a gun. How does the sheriff handle this?

REPRESENTATIVE JORE commented that the sheriff would simply have to use some tact.

SENATOR REINY JABS asked why so many people need to carry a concealed weapon.

Mr. Marbut stated that in the states which have allowed ready issuance of concealed weapon permits there has been a drop in crimes against persons. There are tourists being attacked in Florida because the criminals no longer find it safe to attack Florida residents because they know there are 188,000 concealed weapon permits issued in the state of Florida. Women apply for concealed weapon permits to take responsibility for their security and become equal with their potential attackers.

SENATOR SUE BARTLETT stated that **Mr. Marbut** agreed to an amendment specifying that the qualification during military service would have to have been in relation to handguns. Would it be equally as acceptable if the amendment also specified that this qualification have taken place within the past five years?

REPRESENTATIVE JORE stated that would be taken into consideration. Any individual who was dishonorably discharged from the military is not qualified to apply for a concealed weapon permit.

SENATOR BARTLETT asked why the advisory council and the negotiation of reciprocity agreements would be assigned to the governor instead of the attorney general.

Mr. Marbut commented they had a similar amendment before the legislature in 1993. In 1992, he contacted Attorney General Racicot and asked who should handle reciprocity. He was told that should be assigned to the governor who is the person who represents Montana.

SENATOR RIC HOLDEN asked what the fee is for a concealed weapon permit.

Mr. Marbut stated there was a $50 fee for the first four years. There was also a $5 fingerprinting fee. Renewals are $25 for four years.

SENATOR HOLDEN asked if it would be legal to wear a unconcealed side arm.

Mr. Marbut stated it was legal to wear one anywhere in Montana except in public buildings, banks or lending institutions, or buildings which have liquor licenses.

SENATOR HOLDEN stated he had a concern with accepting out-of-state people into Montana with concealed weapons.

Mr. Marbut stated that other states which have laws similar to Montana, have honorable, law abiding citizens. If the governor and the governor's advisory council determine the law is a similar law and the people are screened in the same manner as Montana screens applicants, those people should be responsible people he would trust.

Closing by Sponsor:

REPRESENTATIVE JORE stated there is great respect and reverence between proponents and opponents on this bill. Most of the issues were very well covered.

HEARING ON HB 234

Opening Statement by Sponsor:

REPRESENTATIVE CHASE HIBBARD, House District 54, Helena, presented HB 234. This bill is intended to help prevent misunderstandings between lenders and borrowers by requiring the terms of business loans of over $75,000 to be put in writing. This will exclude letters of credit, personal lines of credit, credit cards, sales transactions, account overdrafts, loans for personal, family or household uses in any amount. Covered under the bill will be banks, savings banks, savings and loans, credit unions, loans of the Farm Credit System and Farm Home Administration, SBA, loans of Department of Commerce Board of Investments and insurance companies. There were substantial changes made in the bill in the House. They raised the threshold from $25,000 to $75,000. They also amended in a duty to inform which shows up in the title and on line 3, section 3, which states that a "In a transaction involving a loan or credit agreement, the person providing the loan or credit shall inform the borrower orally and in writing prior to obtaining the borrower's signature on an agreement that all previous oral representations are void." There are two friendly amendments. On line 22, page 2, the word "personal" is inserted after "credit". That would exempt personal lines of credit. On page 3, line 5, the word "orally and" would be stricken. This litigation grew out of the liability crisis in the 80s where substantial verdicts were awarded on bad faith, breach of oral commitments to lend, fiduciary obligations and oral statements made by a lender. Between 1985 and 1990, because of this crisis, 31 states responded with liability protection. In 1991 the American Bar Association formed a task force from which a model statute emerged and this legislation is modeled after that statute. Currently 40 states around the country have similar legislation. Montana and Wyoming are the only states in the west which do not. By requiring loan and credit agreement terms and conditions to be written down, there is far less chance for misunderstandings for both borrowers and lenders. From the

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/3/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3/3/95
BILL NO. HB 232

Testimony in Opposition to House Bill 232
Presented by the
Montana Sheriffs and Peace Officers Association
February 28, 1995

Mr. Chairman and members of the Senate Judiciary Committee: My name is Bill Slaughter. I am the Sherrif of Gallatin County and I am on the Board of Directors of the Montana Sherrifs and Peace Officers Association (MSPOA). I am before you this morning on behalf of the Montana Sheriffs and Peace Officers Association in opposition to House Bill 232 .

MSPOA stands in opposition to HB 232, as we did when this bill was heard in the House Judiciary Committee. We understand the difficult job you face in trying to strike, through legislation, a proper balance between the Second Amendment rights that all citizens enjoy; and the need to preserve the peace and protect the public. Peace Officers face the identical challenge, although in a very different environment, every day.

It is the position of MSPOA that HB 232 upsets the delicate balance that has existed for several years concerning the issue of the right to carry a concealed weapon in the state of Montana; and that the peace in our communities and the protection of our citizens will be jeopardized if HB 232 is enacted into law by the 54th Legislature.

By way of background, the questions of to whom and under what circumstances permits for the carrying of concealed weapons ought to be given were first raised in the 1989 Legislature. In the 1991 Session, after some tough negotiations, the law currently on the books was passed, with the concurrence of concealed weapon advocates and local law enforcement agencies.

MSPOA believed that the issue had been resolved to the satisfaction of all interested parties in the 1991 Session; and that the permitting process agreed to and enacted was working quite well in Montana counties.

We were surprised, therefore, to see concealed weapon advocates come forward in the 1993 Session with amendments to current law very similar to what is found today in HB 232.

Those amendments were rejected by the 1993 Legislature; just as HB 232 should be rejected by this Legislature.

MSPOA believes that the current law is working, as evidenced by the fact that the number of concealed weapon permits has increased dramatically in the last few years. According to the State Identification Bureau at the Dept. of Justice, these are the figures with regard to concealed weapon permits in Montana:

•1993	837	concealed weapon permits on file w State ID Bureau.
•1994	1369	concealed weapon permits on file w State ID Bureau.
•1995 (Jan. 1st)	2925	concealed weapon permits on file w State ID Bureau.

Obviously, permits are being issued to many, many applicants.

If there are problems with the current law, MSPOA's contention is that these are local problems that can be solved locally. If other remedies cannot be found there is the option of voting the Sherrif out of office and electing a new one

MSPOA sees no compelling need for the revisions to current law found in HB 232.

MSPOA has several other specific concerns with HB 232, Mr. Chairman. These are as follows:

1. Page 2, Lines 16-18: Requires the Sheriff to give a concealed weapon applicant a written reason for the denial of a concealed weapon permit. This written statement must contain the "reasonable cause" upon which a denial is made; and must include "evidence supporting the reasonable cause finding."

Our belief is that this language compromises the ability of law enforcement to conduct investigations into wrongdoing by persons suspected of engaging in criminal activity.

Suppose for example, that a suspected drug dealer, who is the object of an ongoing, covert investigation applies for a concealed weapon permit? Our understanding of HB 232 is that we would have to issue the permit; or provide, in writing, the reason for its denial; plus the 'reasonable cause' for the denial; plus the 'evidence supporting the reasonable cause finding.' It's not as easy or simple, as the proponents of HB 232 stated, as writing a note saying: 'permit denied because the applicant is the subject of an ongoing investigation.'

That statement alone would be quite damaging to our ability to conduct investigations. Our reading of HB 232, however, leads us to conclude that we would be required to provide much more than a simple denial to an applicant. We would be required to provide a reason for the denial; and provide evidence that supports the denial.

It's not only suspected drug dealers who would benefit from this change to the current law: suspected burglars, arsonists, poachers, and others suspected of being engaged in illegal activities would benefit from this language in HB 232.

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DATE 3-3-95
HB 232

2. Page 2, Line 30 and Page 3, Lines 1-2. Contains new language stating that 'evidence that the applicant, during military service, was found qualified to operate firearms' is adequate to demonstrate familiarity with a firearm.
Our belief is that this test is inadequate. It fails to account for several sets of very possible circumstance. For example, we have WWI veterans in Montana who may not have handled a firearm in 50 years. Also, a dishonorable discharge from the military, for reasons that may well be the same reasons to deny an applicant a concealed weapon permit, might have been given to someone who was found qualified to operate a firearm.

3. Page 3, Lines 8-11. This is a very troubling clause in HB 232. The first six words alone provide an insight into the thinking of the proponents: 'If the Sherrif and the applicant agree...' To MSPOA, this language implies something like contract language between two potential business partners.

There is much more at stake here than that. Sheriffs and Deputies are local law enforcement authorities. They are elected (Sheriffs) or hired (Deputies) to preserve the peace and protect the citizens of Montana counties. Ours is a special role and a unique responsibility; and we do not think that Peace Officers and applicants for concealed weapon permits are required to 'agree' to the need for a field test of an applicant's ability to demonstrate familiarity with a firearm.

At the very least, MSPOA suggests changing the language to read: 'If the Sherrif deems it necessary...'

This keeps the civil authority where it belongs: in the hands of the Peace Officers who are elected or hired to make exactly these kinds of decisions and judgments, on exactly these kinds of issues.

Second, there is the delegation clause on Page 3, Line 10 of HB 232. MSPOA believes that this is something that should not be delegated to persons or parties other than the Sheriff or Deputy responsible for the issuance of concealed weapon permits in a county .

In order to understand the underlying rationale for our objection to this language, it's necessary to go back to 1991, and to the language in current law found on Page 2, Lines13-15. That language was included in order to provide the Sheriff the opportunity for subjective, field based, first person observation of an applicant for a concealed weapon permit, in order to determine or detect the conditions described on lines 14,15 of Page 2: evidence of mental illness, mental defect, mental disability or other disabling conditions that may be the basis for denial of a concealed weapon permit.

This opportunity for field based, first person, professional observation of an applicant is not something that MSPOA believes should be delegated away to hunter safety courses, rod and gun clubs or any other group, club or organization.

Current law already contains several provisions that allow a Sheriff or Deputy to issue a concealed weapon permit without requiring a field demonstration of the applicant's familiarity with firearms. The language in current law, Page 2, Lines 21-30, gives law enforcement all the discretion it needs in this area.

Our position is that the new language on Page 3, Lines 8-11 in unnecessary, and it should all be stricken from the bill.

4. Page 3, Lines 15-17. Appeal. Our position is that the new language is not necessary.

5. Page 3, Lines 19-27. Concealed Weapon Reciprocity Agreements. MSPOA is concerned about quality control and quality assurance when it comes to reciprocity agreements with other states. HB 232 references other states 'that have concealed weapon permit laws similar to those of Montana.' There is plenty of room for error in the word 'similar.' MSPOA's concern centers on who will be coming into Montana, from which other states, carrying concealed weapons; and what degree of assurance does Montana have that proper background checks have been made, and that proper safeguards are in place in the other states?

In conclusion, MSPOA believes that the law currently in place is adequate; and that it does not revisions of the kind contained in HB 232 in this Session of the Legislature.

We have maintained the position that carrying a concealed weapon is a privilege--not a right. We have maintained that there are many legitimate reasons for carrying a concealed weapon: as a means of added protection for persons in certain trades, occupations or businesses; in conjunction with sporting or recreational pursuits.

In the last two years, more than 2000 new concealed weapon permits have been issued by local law enforcement officers. This tells us that the current law is working as intended. Our position is that this legislation is not needed; and that it could do much more harm than good if enacted into law.

Thank you very much for your time and attention this morning. I will be pleased to try to answer any questions you may have.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3/3/95
BILL NO. HB 232

Testimony in Opposition to House Bill 232
Presented by the
Montana Sheriff and Peace Officers Association
March 3, 1995

Mr. Chairman and members of the Senate Judiciary Committee: My name is T. Gregory Hintz, I'm a 21 year veteran of the Missoula County Sheriff's Department with the rank of Lieutenant. This morning I'm before you on behalf of the Montana Sheriffs and Peace Officers Association (MSPOA).

Because of many concerns over this new legislation the Montana and Sheriffs and Peace Officers Association stands in opposition to House Bill 232.

With the current trend of legislation at our Nation's Capital over gun control bill issues and controlling violent crime on our streets, you as a committee must decide the balance between the Second Amendment rights that all citizens are guaranteed and the need by law enforcement to preserve the peace and protect the public.

So as to not repeat any of our concerns I'm specifically going to address the changes dealing with:

1. Minimum training requirements
2. Reciprocity Agreements
3. Exemption from Brady Law Requirements.

T R A I N I N G

The current law allows for the use of a firearms safety or training course approved or conducted by the department of Fish, Wildlife and Parks. These courses were specifically designed as Hunter Safety Courses, and generally don't deal with the aspects of Handgun Safety. Those of us who attended these courses as a requirement to hunt in Montana never left the classroom, were tested on classroom information and never fired a weapon of any kind during this training. Courses offered by recognized instructors from state and national firearms associations are more acceptable sources of training and cover issues that directly relate to safe handling of Handguns, and concerns directly dealing with Use of Deadly Force. They also offer a more acceptable means of testing the student at the local range to his/her capabilities. That language should never of been accepted in the first place and should now be stricken from current state law.

The same concerns hold true for accepting evidence that the applicant was found to be qualified to operate firearms during Military Service. This language should also be stricken from the bill. All branches of Military service have a way and need to qualify large numbers of trainees with military weapons, usually long arms. I find it irresponsible to accept a military discharge with a qualification of M-1 carbine as meeting our current training needs.

EXHIBIT 2
DATE 3-3-95
HB 232

This language should not be considered as acceptable. The military has a way of dealing with incidents of Killed By Friendly Fire. Somehow those number of incidents don't correlate to Qualified to Operate Firearms.

I think it is more acceptable to hold our citizenry to the same standards as they hold law enforcement to when it comes to training and and safe handling of firearms.

R E C I P R O S I T Y A G R E E M E N T S

The Montana Sheriffs and Peace Officers Association is concerned about quality control and quality assurance when it comes to reciprocity agreement with other states. Accepting those permits from other states who's permit laws are similar to those of Montana is not acceptable. There is plenty of room for error in the word " Similar ". Montana's concern for meeting those needs of our citizenry to meeting their needs for self protection are not generally the same as those of a surrounding state, or populous states such as California, Texas or Minnesota.

This language should not be considered, under the existing state law, law enforcement has been able to afford you the best quality control.

J. Gregory Hintz
Lieutenant

MISSOULA COUNTY SHERIFF'S DEPARTMENT
200 W. Broadway
Missoula, Montana 59802

(406) 721-5700, Ext. 3302
523-4757 After Hours
721-8575 FAX
9-1-1 Emergency

B R A D Y L A W R E Q U I R E M E N T S

Those applying for permits to carry concealed weapons in Montana should be exempt from the federal requirements imposed by the Brady Law. Background checks for these permits are more thorough and should be accepted as meeting the requirements for any purchase of a firearm, and exclude the five day waiting period. Several counties in Montana have already adopted this policy. This language is acceptable for adding to state law.

In closing I hope that this committee will consider and address our concerns before taking any action on this new legislation. Quite frankly the current law is meeting the needs of your constituents, and the concerns of the law enforcement community.

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
John Alke	mt Liability Coalition	HB 234	✓	
Tom Hopgood	Mt. Indep. Bankers Assoc.	HB234	✓	
A.M. (Bud) Elwell	WCSM / MWAC	HB 234	←	
Russell B Hill	MT Trial Lawyers	HB 234		—

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 8, 1995, at 9:00 AM

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 157, HB 214, HB 347, HB 253
Executive Action: HRJ 14, HB 232, HB 253, HB 347

HEARING ON HB 214 & HB 157

Opening Statement by Sponsor:

REPRESENTATIVE DEBORAH KOTTEL, House District 45, Great Falls, presented HB 214. This legislative session has had a lot of focus on the issue of crime. The three areas of focus are: victim protection, rehabilitation/prevention and deterrents/punishment. Deterrents and punishment is not just keeping people in prison. Deterrents deal with what to do with the individual once they are out of prison and on the street. How will the people of Montana be protected? HB 214 deals with

they used the student practice parts of the Montana Defender Project to say that there was no point.

CHAIRMAN CRIPPEN stated that if this program was disbanded and no other program put in, there would be a problem. Even with the expanded law library and the ability to access it, there still may be a problem. The state would still have the option to hire attorneys to represent these inmates. He favors having the law students handle this. This gets the students orientated in the defense area.

Vote: The motion that HJR 14 be concurred in **CARRIED** on oral vote with **SENATORS CRIPPEN, BARTLETT, DOHERTY, HALLIGAN,** and **NELSON** voting **"NO".**

EXECUTIVE ACTION ON HB 232

Discussion: **Valencia Lane** stated she typed the amendments in Legislative Council form. The amendments were handed out yesterday by **REPRESENTATIVE JORE.** They are a compromise position and have been negotiated by the Montana Shooting Sports Association and the Sheriffs and Peace Officers Association.

Mr. Smith stated they had a problem with the second amendment. He suggested striking everything after the word "based" on line 17.

SENATOR HALLIGAN stated the bill would read "a written statement of the reasonable cause upon which the denial is based." They would still get the written statement of the reasonable cause upon which the denial is based. They expect that the contents of that writing to include whatever the sheriff or police officer feels is the indication of the reasonable cause finding.

CHAIRMAN CRIPPEN clarified that on amendment 3, line 17, page 2, after the word "based" there would be a period and then strike the rest of line 17 and all of 18.

SENATOR GROSFIELD stated that the sheriff does not have to give the applicant a written statement of reasonable cause if there is an ongoing criminal investigation. Would that inform the applicant that he is undergoing some kind of investigation? How would sheriffs and peace officers deal with that issue?

Mr. Smith stated that if they accept amendment 1, that language would read, "At the time the application is denied, unless the applicant is the subject of an active criminal investigation, the sheriff shall give the applicant a written statement of the reasonable cause upon which the denial is based." In the spirit of cooperation they acceded to that amendment.

SENATOR GROSFIELD asked **Mr. Marbut** if he saw a problem there. He felt it was a statement to the applicant that they are under a criminal investigation.

Mr. Marbut stated that it is extremely unlikely that criminals apply for concealed weapon permit. There are also sheriffs in Montana who simply do not issue permits for up to 90 days. If a criminal were applying for a permit to find out if there is a criminal investigation, he could read a number of things into that including the fact there may be an ongoing investigation but he did not believe that was a serious issue. This was the last area they negotiated with the Sheriffs and Peace Officers Association. He did not recall any reluctance on their part.

SENATOR GROSFIELD asked how the expenses of the advisory council would be paid.

Mr. Marbut stated there was no discussion and they assumed all along that people who served on that council would serve as volunteers.

CHAIRMAN CRIPPEN stated that if a salary was not specifically provided, it would be a voluntary position. He believed they would be allowed per diem.

SENATOR HALLIGAN believed they were all created under one particular section of the code and if this was not provided for they would not be paid. He asked to segregate amendment no. 7. If this bill works and the governor is actively negotiating, there will be no need for an advisory board to negotiate the interstate permits. He asked if it should be created when it is not needed.

Mr. Marbut stated that provision was put in at the request of the Montana Sheriffs and Peace Officers Association. They wanted to make sure there would be an advisory council working on it in which they would have representation and it is their intention that an advisory council should do most of the work. They are extremely sympathetic with their desire to be on it. If it makes them feel better to have "shall" rather than "may" they are glad to have that in there. It is not something they requested.

CHAIRMAN CRIPPEN stated there was an inconsistency wherein the words were "may negotiate" and then a "shall advise council". There might be a council and the governor would not have to do any negotiating at all and ignore the council. What the Montana Sheriffs and Peace Officers Association intended is that if there is any negotiation it shall work through a council the governor would appoint.

SENATOR HALLIGAN asked **Mr. Smith** what his thoughts were.

Mr. Smith stated that the Montana Shooting Sports Association felt very strongly that if reciprocity agreements could be concluded with other states, that the governor and the State of Montana ought to have the legal authority to enter into them and did not want any legal impediments in this bill or in the statute to doing so. The Sheriffs and Police Officers agreed. There

shouldn't be any legal impediments to doing so, but they still had a lot of concerns about these reciprocity agreements. They conceded to **Mr. Marbut's** statement that they were a little bit behind the times in terms of concealed weapons and they were not very comfortable with a blanket invitation to enter in these agreements. They felt that the advisory council ought to be established to provide some additional guidance and knowledge and they would advise that council if they didn't feel it would be wise to enter into agreements until this council has had a chance to function during at least one interim, even though there are not legal barriers to doing so in the law itself.

SENATOR HALLIGAN felt it would not be necessary to segregate the amendments.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 232.** The motion **CARRIED UNANIMOUSLY** by oral vote.

Motion: **SENATOR BAER MOVED HB 232 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR JABS** stated that he had a problem with the sheriff providing written notice as to why an application is denied. He believed that would open up a lawsuit for defamation of character.

Mr. Marbut stated in the underlying concealed weapon permit law there is a provision which immunizes the sheriff from liability due to what he does or does not do about permits.

SENATOR GROSFIELD stated that he is still concerned that they are putting people on notice that they are under criminal investigation.

Vote: The motion **CARRIED** by oral vote with **SENATORS BARTLETT, GROSFIELD,** and **JABS** voting **"NO".**

EXECUTIVE ACTION ON HB 347

Motion/Vote: **SENATOR BAER MOVED HB 347 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on oral vote.

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-8/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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SENATE STANDING COMMITTEE REPORT

March 8, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 232 (third reading copy -- blue), respectfully report that HB 232 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 10.
Following: "AND"
Insert: "REQUIRING THE GOVERNOR"

2. Page 2, line 16.
Following: "shall"
Insert: ", unless the applicant is the subject of an active criminal investigation,"

3. Page 2, lines 17 and 18.
Following: "based" on line 17
Strike: remainder of line 17 through "finding" on line 18

4. Page 3, line 1.
Following: "evidence"
Insert: "that the sheriff may or may not accept"

5. Page 3, line 2.
Strike: "firearms"
Insert: "handguns"

6. Page 3, lines 21 through 24.
Following: "Montana." on line 21
Strike: remainder of line 21 through "state." on line 24

7. Page 3, line 25.
Following: "governor"
Strike: "may"
Insert: "shall"

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

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